

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARILYN ELLMAN,

Plaintiff,

CIVIL ACTION NO. 04 CV 72851 DT

v.

DISTRICT JUDGE BERNARD A. FRIEDMAN

CLAIRE ELLMAN PRYOR, ET AL.,

MAGISTRATE JUDGE VIRGINIA MORGAN

Defendants.

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**ORDER DENYING PLAINTIFF'S MOTIONS TO COMPEL  
RESPONSES TO SUBPOENAS, FOR PAYMENT OF ATTORNEY  
FEES, FOR A TELEPHONIC MEDIATION HEARING, AND  
FOR COURT ACCEPTANCE OF SUBPOENAED MATERIALS  
PAST THE DISCOVERY CUT-OFF DATE**

This matter comes before the court on the following motions filed by plaintiff: (1) motion to compel responses to subpoenas, (2) motion for payment of attorney fees, (3) motion for a telephonic mediation hearing or for postponement of mediation, and (4) motion for court acceptance of subpoenaed materials past discovery cut-off date.

With regard to the motion to compel, Fed.R.Civ.P. 45 provides that a subpoena may be issued only by the clerk of the court or by an attorney who is licensed to practice in the issuing court. Plaintiff is not an attorney and has not shown that the subpoenas in question were issued by a person with authority to do so under Rule 45. Further, it does not appear that plaintiff served the motion to compel upon the subpoenaed individuals, none of whom are parties to this

proceeding. Thus, those individuals have not been given proper notice of the motion.

Accordingly, the motion to compel responses to the subpoenas is **DENIED**.

By her motion for payment of attorney fees, plaintiff seeks an order requiring that her legal fees be “paid out of Claire Pryor’s inheritance from mother Irene Ellman’s Revocable Trust and Will, just as currently Claire Pryor has her attorney fees paid for out of her sister and plaintiff Marilyn Ellman’s inheritance from her mother’s Trust.” Plaintiff also requests an accounting of the fees paid on behalf of Claire Pryor. Plaintiff has failed to set forth any plausible factual or legal basis for the requested relief. Accordingly, plaintiff’s motion for payment of attorney fees is **DENIED**.

Regarding the motion for a telephonic mediation hearing or for postponement of the hearing, on April 28, 2005, Judge Friedman entered an order adjourning mediation until after the pending summary judgment motions are decided. Accordingly, plaintiff’s motion is moot. The motion is therefore **DENIED**.

Finally, plaintiff requests that the court “honor all material received as a result of the subpoenas as discovery material accepted by the Court.” The court has denied plaintiff’s motion to compel compliance with the subpoenas to which she refers. Thus, there is presently no such material for the court to “honor.” Accordingly, plaintiff’s motion for court acceptance of subpoenaed materials after the discovery cut-off date is **DENIED**.

Dated: May 23, 2005

s/Virginia M. Morgan  
VIRGINIA M. MORGAN  
UNITED STATES MAGISTRATE JUDGE

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**Proof of Service**

The undersigned certifies that a copy of the above Order was served on the parties and attorneys of record herein by electronic means or U.S. Mail on May 23, 2005.

s/Jennifer Hernandez  
Case Manager to  
Magistrate Judge Morgan